

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by 1050, 5510, 8389, 8550, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 7850, 7850.5, 8043, 8053, 8389, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559 of said Code, proposes to amend sections 163, 163.5 and 164, Title 14, California Code of Regulations, relating to the herring fishery.

Informative Digest/Policy Statement Overview

Sections 163 and 163.5, Title 14, CCR

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulatory changes will establish fishing quotas by area for the 2002-03 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays. The proposed fishing quota in San Francisco Bay is 3,540 tons (10 percent of the 35,400-ton estimated spawning biomass for the 2001-02 season). An initial 300-ton fishing quota (4.1 percent of the 2001-02 estimated spawning biomass of 7,243 tons) is proposed for Tomales Bay with provisions to increase the quota in season if escapement goals are achieved by February 15, 2003. This season, the recommendation for in-season increases is as follows:

- If the spawning escapement is more than 3,000 tons, increase the quota to 400 tons.
- If the spawning escapement is more than 4,000 tons, increase the quota to 500 tons.

The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2002-03 season only, shall be no less than 2 inches or greater than 2 ½ inches. The proposed one-year continuation of the regulation, originally approved for the 2000-01 and 2001-02 seasons only, will allow the Department to continue to evaluate the effect of reduced mesh length on the size and age composition of herring caught in 2 inch mesh gill nets.

Other changes relating to the Department of Fish and Game (Department) herring season dates, permit suspensions, and minor editorial changes are recommended to improve the clarity of the regulations or provide for the efficient harvest and orderly conduct of the fishery and for the protection of the resource. The following is a summary of those proposed changes in sections 163 and 163.5, Title 14, CCR.

- Set the dates of the roe herring fisheries in San Francisco Bay from 5:00 p.m. on Sunday, December 1, 2002 to noon on Friday, December 20, 2002 ("DH" gill net platoon only), and from 5:00 p.m. on Sunday, January 5, 2003 to noon on Friday, March 14, 2003.

- Set the dates of the roe herring fishery in Tomales Bay from 5:00 p.m. on Thursday, December 27, 2002 until noon on Tuesday, December 31, 2002, and from noon on Sunday, January 5, 2003 to noon on Friday, March 7, 2003.
- Correct existing latitude/longitude coordinates for position references, and add latitude/longitude coordinates to existing position references that do not provide associated coordinates.
- Clarify that the violation points assigned for failure of a permittee to be aboard the vessel during herring fishing operations also apply to a permittee's Department-authorized temporary substitute.
- Revise the individual quota provisions for permittee's participating in a mesh size study in San Francisco Bay to 0.5 percent of the sac roe quota for each platoon to which a permittee is assigned.
- Increase the maximum number of permittee's that may participate in a mesh size study in San Francisco Bay from three to six.
- Transfer 10 tons of quota from the underutilized herring fresh fish fishery to the gill net fishery for use in a gill net mesh size study, for the 2002-03 season only.
- Make minor editorial revisions.

Section 164, Title 14, CCR

Under existing law, herring eggs on kelp (HEOK) may be taken for commercial purposes only under a revocable, nontransferable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permit limitations; season; fishing area; permittee categories and qualifications; permit conditions; royalty fees; permit application procedures; permit performance deposit requirements; gear, fishing and harvesting restrictions; fishing quotas; landing and processing requirements; and permit suspension conditions and procedures. In addition, current regulations limit the number of permits that can be issued.

The proposed regulatory changes will establish fishing quotas for the 2002-03 herring eggs on kelp fishing season. Individual herring eggs on kelp quotas will depend on the total herring fishery quota for San Francisco Bay established by the Fish and Game Commission under Section 163, Title 14, CCR. The proposed 2002-03 total herring fishery quota for San Francisco Bay is 3,540 tons (10 percent of the estimated spawning biomass for the 2001-02 season); this results in a 6.2-ton individual herring eggs on kelp quota for a "CH" permittee and a 1.8-ton individual quota for a non-"CH" gill net permittee. These represent a decrease in individual quotas of 24 percent for a "CH" gill net permit from the 2001-02 season quota (7.9 tons), and 14 percent for a non-"CH" gill net permit from the 2001-02 season quota (2.1 tons).

Other changes are recommended to provide for the efficient operation and orderly conduct of the fishery, improve the clarity of the regulations and for the protection of the resource. The following is a summary of those proposed changes.

- Modify Subsection (j) Method of Take to describe the area a line used for HEOK fishing may occupy as a line length rather than a square foot area.
- Clarify the description of a line used in HEOK fishing by omitting the word “continuous” from the description of a line in Subsection (j) Method of Take.

Minor editorial changes in language and form references are proposed to correct or clarify the existing regulatory language.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in City Hall, City Council Chambers, 990 Palm Street, San Luis Obispo, California on Friday, August 2, 2002 at 8:30 a.m., or as soon thereafter as the matter may be heard

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Elihu Harris State Building, 1st Floor Auditorium, 1515 Clay Street, Oakland, California on Saturday, August 30, 2002, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 23, 2002 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than August 30, 2002, at the hearing in Oakland, CA. E-mail comments must include the true name and mailing address of the commenter.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Jon D. Snellstrom at the preceding address or phone number. Eric Larson, Herring Fishery Program, Department of Fish and Game, phone (650) 631-7730, 255 Harbor Blvd., Belmont, CA 94002, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

163 & 163.5 The proposed changes regarding seasons, quota allocations, mesh size study individual quota provisions, coordinates for permit areas and fishing boundaries, and minor editorial changes are not expected to have a significant statewide adverse economic impact on businesses.

The average quota over the history of the San Francisco Bay roe herring fishery (30 seasons) is 6,104 tons. The average quota over the most recent five years has been lower than this (5 season average is 4,924 tons). The proposed quota (3,540 tons) is 42 percent less than the long term average, and thus, in comparison to the long-term average, the proposed decrease in the fishing quota for San Francisco Bay will have a negative impact on some individual fishermen in the short-term. However, the proposed quota reflects appropriate quota levels relative to current population trends. Relative to the reduced quota in 2001-02, the proposed quota for San Francisco Bay represents a decrease in quota which will have a significant but unquantifiable negative short-term impact on some individual fishermen. Despite quota allotments, there is no guarantee that the quota will be caught. In the 1997-98 season, for example, only 20 percent of the quota was caught. The entire quota was caught in the 1998-99 and 2000-01 seasons, but in the 1999-00 season, only 62 percent of the quota was caught. The proposed gill net quota for San Francisco Bay represents a 14 percent decrease from last year's quota (4,476 tons), and a 6 percent increase relative to last year's catch (3,287 tons). The proposed decrease in the San Francisco Bay quota (compared to the 2001-02 season quota) will have a significant, but unquantifiable, negative short-term impact on herring buyers, and possibly to some small businesses that provide goods and services to the fishing fleet and buyers. Losses in revenue will depend on the ex-vessel price for the season and the quantity and quality of an individual's landings. The decreased revenues for the ten permittees who transfer their quota to the herring eggs on kelp fishery are significant but unquantifiable (compared to the 2001-02 season quota). Any negative impacts relative to the long-term average quota are balanced in the long-run by years when resource abundance and fishing quotas are high.

The proposed action for the Tomales Bay herring fishery will not have a significant statewide adverse economic impact affecting business, which includes the ability of California businesses to compete with businesses in other states. The proposed initial quota of 300 tons is not expected to have a

significant negative impact on individual fishermen or herring buyers. In recent years, the initial quota has been based on 10 percent of the previous seasons spawning biomass. The proposed initial catch quota of 300 tons is conservatively based upon 4.1 percent of the estimated spawning biomass from the 2001-02 season. The initial quota is set at just 4.1 percent of the spawning biomass this year, as opposed to 10 percent, because high exploitation rates have sometimes occurred after high biomass seasons. The Department believes that a pro-active and conservative initial quota for the 2002-03 season may prevent a possible over-exploitation of the Tomales Bay herring population. The goal is to help ensure a stable spawning population for the future.

When compared with the commercial catch over the past ten years, only twice (1995-96 and 2001-02 seasons) has the Tomales Bay catch exceeded 300 tons. The commercial catch for the 2001-02 season was 354 tons, which exceeded the season's initial quota of 300 tons, but was only 71 percent of the in-season increased quota of 500 tons. The lower initial quota based on 4.1 percent is unlikely to have an adverse economic impact. The proposed regulations contain provisions for increasing the quota in-season if spawning escapement goals are achieved. The provision for in-season quota increases is a valuable fisheries management tool that provides flexibility to managing the fishery based on the size of the current spawning population. The provision supports the conservation of the resource and realizes the possible economic benefit of allowing a higher catch, if the resource is abundant enough to withstand the fishing pressure. The proposed action will have an unquantifiable impact on some small businesses that provide goods and services to the fleet. In the long-term, these impacts are balanced by the positive economic returns that accrue in those years when resource abundance and fishing quotas are high.

The proposed application of violation points, currently assigned to a permittee not aboard vessel during fishing operations in Section 163.5, to a Department-approved crew member temporarily serving in his or her place aboard the vessel, is not expected to have an adverse economic impact.

The proposed addition of form number is being made for the sake of clarity and will not have an economic impact.

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The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action is based on regulations that are already in place. The average quota over the history of the herring eggs on kelp fishery in San Francisco Bay (thirteen seasons) is 111.6 tons per season (all individual quotas combined). The proposed quota is significantly less than the long-term average, and thus, in comparison to the long term average, will have a negative economic impact on individual fishermen in the short-term. However, there is no guarantee that the quota will be caught; the herring eggs on kelp season quota has only been reached in three seasons (i.e., 97.4, 99.7 and 100 percent of the quota was harvested in the 1989-90, 1993-

94 and 1995-96 seasons, respectively). When compared to last season's catch of 45.3 tons, the proposed 57.6 ton herring eggs on kelp quota (derived from the 3,540 ton quota for San Francisco Bay) would represent a 27-percent increase. The proposed decrease in the San Francisco Bay quota (compared to the 2001-02 season quota) may have a significant, but unquantifiable, negative impact on the buyers of herring eggs on kelp and possibly on some business that provide goods and services to the permittees. In the long-term, there is a balance between seasons when resource abundance and fishing quotas are low and seasons when resource abundance and finishing quotas are high.

The proposed corrections in the citations of sections of the Fish and Game Code or Title 14 are being made for the sake of clarity and will not have an economic impact.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (g) Effect on Housing Costs:

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 2, 2002

John M. Duffy
Assistant Executive Director